

REMARKS/ARGUMENTS

Claims 1, 2, 4-8, 10, and 15 are pending in the present application. Claims 1, 6, and 8 have been amended. Claim 1 is the sole independent claims. In view of the Amendments and the following Remarks, the Examiner is respectfully requested to reconsider the various outstanding rejections.

Rejection Under 35 U.S.C. § 112

Claim 8 stands rejected under 35 USC 112, 2nd Paragraph, as being indefinite. Specifically, the Examiner asserts that "a third signal processing unit" (line 17) and "a fourth processing unit" (line 20) lack antecedent basis, presumably because the claim does not recite a second processing unit.

Applicants have amended claim 8 to replace the abovementioned elements with "a second signal processing unit" and "a third signal processing unit," respectively. In view of these amendments, reconsideration and withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. § 103

Claims 1, 2, 4, 5, 7, 8, 10, and 15

Claims 1-5, 7, 10, and 15 stand rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,666,425 to

Sibbald et al. (hereinafter Sibbald) in view of U.S. Patent No. 3,900,707 to Hanson (hereinafter Hanson). This rejection is respectfully traversed.

Sibbald/Hanson Does Not Teach or Suggest Each Claimed Feature

M.P.E.P. § 2143.03 sets forth the following requirements for a proper rejection under 35 U.S.C. § 103:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Applicant respectfully submits that the proposed combination of Sibbald and Hanson fails to provide a teaching or suggestion of all of the features in the claimed invention.

In the rejection, the Examiner relies on Sibbald as disclosing "means for compensating cross-talk" (Office Action at page 3, second paragraph). Sibbald discloses that a signal to be supplied to a first speaker positioned around a first ear of a user is corrected based on a cross-talk component from a second speaker positioned around a second ear of the user.

Conversely, independent claim 1 recites that a signal to be supplied to a first speaker positioned around a first ear of a user is corrected based on a cross-talk component from a second speaker positioned around the first ear of the user.

Thus, Sibbald fails to disclose the abovementioned feature of claim 1. It is respectfully submitted that Hanson fails to remedy this deficiency in Sibbald.

No Motivation to Combine Sibbald and Hanson

In addition, Applicant respectfully submits that the proposed combination of Sibbald and Hanson is improper because Sibbald and Hanson teach away from each other. Sibbald teaches a recording process that produces two final channels -- left and right channels 58 and 60. See, e.g., Sibbald at abstract; Fig. 1; and col. 5, lines 49-61. On the other hand, Hanson discloses an apparatus for reproducing sound from four channels in a quadraphonic system. See, e.g., Hanson at col. 1, lines 1-6, 25-35.

As such, Applicant respectfully submits that one of ordinary skill in the art would not have been motivated to combine Sibbald and Hanson in view of their incompatible teachings.

Claims Allowable Over Sibbald/Hanson

In conclusion, Applicant submits that Sibbald/Hanson combination fails to teach or suggest each claimed feature of independent claim 1. Accordingly, Applicant respectfully submits

that claim 1 is allowable, and that claims 2, 4, 5, 7, 8, 10, and 15 are allowable at least by virtue of their dependency on claim 1. Thus, reconsideration and withdrawal of the § 103 rejection of claims 1-5, 7, 8, 10, and 15 is respectfully requested.

Claim 6

Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Sibbald. This rejection is respectfully traversed.

Initially, Applicant challenges the Examiner's assertion of official notice. Initially, it is pointed out that, although the Examiner's states that she is taking official notice that "a plurality sound [sic] wave outputs positioned around a listener was well known in the art," the Examiner attempts to modify Sibbald by "providing a desired number of sound wave units (at least eight) to be positioned symmetrical about the head (ears) of a listener in a conventional manner..." (see Office Action at page 7).

Thus, it seems that the Examiner is taking official notice that it was well known to include at least eight sound wave output units positioned around a listener. Applicants respectfully demand the Examiner to provide authority for this

assertion. If this is not what the Examiner is taking official notice of, then Applicant respectfully submits that the Examiner has failed to provide a teaching or suggestion within the cited patents of each and every claimed feature and, thus, has failed to provide a *prima facie* case.

Furthermore, Applicants point out that Claim 6 has been amended to depend from independent claim 1. Even assuming for the sake of argument that the Examiner's assertion of Official Notice was proper, Applicants respectfully submit that it fails to remedy the deficiencies of Sibbald and Hanson set forth above in connection with independent claim 1. As such, it is respectfully submitted that claim 6 is allowable at least by virtue of its dependency on claim 1.

Thus, the Examiner is respectfully requested to reconsider and withdraw this rejection.

Conclusion

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider the outstanding rejections and issue a Notice of Allowance in the present application.


Should the Examiner believe that any outstanding matters remain in the present application, the Examiner is respectfully requested to contact Jason W. Rhodes (Reg. No. 47,305) at the telephone number of the undersigned to discuss the present application in an effort to expedite prosecution.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Michael R. Cammarata, #39,341


MRC/JWR

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000